STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 13, 2005
V ANTHONY RICHARD WILLIAMS, Defendant-Appellant.	No. 253114 Monroe Circuit Court LC No. 03-032769-FH

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of retaining or possessing a financial transaction device without the consent of the device holder, MCL 750.157n(1). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 34 months to 15 years' imprisonment. Because we are not persuaded by any of defendant's arguments on appeal, we affirm.

On March 13, 2003, Rita Rice left her apartment at approximately 6:00 p.m. When she returned between 7:30 and 8:00 p.m. she found that her front door had been forced open and her purse containing her Capital One credit card, her television, jewelry box, and telephone were missing. On March 17, 2003, Deputy Kovenich came into contact with defendant at a Shell gas station. Defendant agreed to go to the Monroe County Sheriff's Department to be photographed and fingerprinted. He also gave consent to have his vehicle searched. Sheriff's deputies searched defendant's vehicle and recovered a Magnavox television remote control and a receiver for an Ameritech telephone. They also recovered Rice's purse, still containing her credit card, from a cooler marked with the initials A.W., located in the trunk of defendant's vehicle. After being contacted by the police, Diane Carter, with whom defendant lived, located Rice's television, part of her telephone, and her jewelry box underneath tarps in an outdoor shed behind Carter's home.

Defendant argues that the trial court erred in denying his motion to suppress evidence removed from his car.

> We review a trial court's findings of fact for clear error, giving deference to the trial court's resolution of factual issues. 'A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made.' We overstep our

> review function if we substitute our judgment for that of the trial court and make independent findings. However, we review de novo the trial court's ultimate decision on a motion to suppress. [*People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001) (internal citations omitted).]

At the hearing on defendant's motion to suppress, Deputy Kovenich testified that, on March 14, 2003, the day after the incident at the Rice residence, he responded to a call made by Susan Cade about a breaking and entering in progress at her home. Deputy Kovenich learned from Cade that a white man with a military style haircut had kicked in or forced entry through her back door. When Cade yelled at the man, he ran away and entered a green car, either a Mercury Sable or Ford Taurus. The car had a large brown dog in the back seat. Cade estimated that the man was between 25 and 30 years old and was approximately five feet, ten inches tall.

On March 17, 2003, Deputy Kovenich saw a green car matching Cade's description, and containing a brown dog. Defendant was pumping air into one of the tires. Deputy Kovenich stopped his vehicle, patted defendant down, and placed him into his patrol car. Defendant was placed in the back seat and could not exit for a short period of time, but he was not handcuffed. Deputy Kovenich and defendant talked while Kovenich attempted to contact detectives assigned to Cade's case. Deputy Kovenich informed defendant about the breaking and entering investigation, and told defendant that the perpetrator left fingerprints at the scene. Defendant denied involvement and agreed to go to the Monroe County Sheriff's Department to be photographed and fingerprinted. Deputy Kovenich testified that he did not threaten defendant in any way. Defendant drove himself in his vehicle to the sheriff's department. On the way, he stopped at an Ace Hardware store to buy "fix a flat." While Deputy Kovenich also stopped, defendant went into the store himself to make his purchase. He returned to his car and proceeded to the sheriff's department where he parked on the opposite side of the street from Deputy Kovenich's vehicle.

At the station, there was a delay in working with defendant because deputies could not find his name, Anthony Williams, in their computer. Eventually, they learned defendant's name was Anthony Blevins. While defendant was in the "intake" area of the jail where photographs and fingerprints are taken, his parole officer, Robert Rankin, appeared and talked to defendant.[1] Rankin testified at the suppression hearing that defendant was at that station voluntarily because he came to clear himself in the investigation. Deputy Kovenich testified that defendant gave consent for the search of his vehicle at the Shell gas station and again in the intake area.

Also at the suppression hearing, Rankin testified that he received information about a recent breaking and entering crime involving a green Taurus vehicle with a large dog in the back seat. The suspect was a white male and was reported to be wearing a white and black striped windbreaker. When Rankin heard the description, he believed it fit defendant. After learning that defendant was in the county jail building, he authorized a parole detainer on defendant.[2] The

[1] Deputy Kovenich did not know defendant and had no idea that he was on parole.

[2] Rankin testified that, if he has reasonable cause to believe a defendant has violated parole, he has a statutory right, MCL 791.239, to search the person, his vehicle, and his residence.

search of defendant's vehicle occurred after defendant issued verbal consent for the search, and after Rankin had placed the parole detainer on defendant. Rankin was advised that defendant had already given permission for the vehicle search, and he observed that search.

Defendant did not testify at the suppression hearing, and provided no evidence to refute that he voluntarily went to the sheriff's department and voluntarily consented to the search of his vehicle. For purposes of this appeal, defendant acknowledges that he voluntarily went to the department.[3]

At the close of the suppression hearing, the trial court held that the police searches of defendant's home[4] and vehicle were valid under the consent exception to the warrant requirement. The trial court found that Deputy Kovenich had sufficient evidence to stop defendant and make inquiries at the gas station. The court also found that when Deputy Kovenich talked to defendant, Kovenich told defendant about the ongoing investigation. Defendant not only denied involvement, but agreed to go to the sheriff's department to be photographed and fingerprinted. The trial court also found that defendant was not under arrest, but cooperated and went voluntarily to the station voluntarily. While there, the police properly detained defendant on a parole detainer.

It is defendant's position on appeal that Deputy Kovenich illegally detained him at the gas station, therefore, the evidence found in his vehicle should have been suppressed. The proper remedy for an illegal search or seizure is suppression of evidence. *People v Chambers,* 195 Mich App 118, 120; 489 NW2d 168 (1992). Here, the police seized no evidence during the initial investigative stop of defendant and did not search defendant's vehicle. After the investigative stop, which took no more than 10 or 15 minutes, defendant voluntarily went to the sheriff's department, a fact he admits on appeal. The constitutionality of the initial interaction between defendant and Deputy Kovenich is not relevant to our review of the suppression issue where the police did not search defendant's vehicle and seized no evidence pursuant to the investigative stop.[5]

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[3] Defendant argues, however, that Deputy Kovenich did not have probable cause or reasonable suspicion to request defendant's voluntarily trip to the sheriff's department. Defendant does not cite any authority to support his position that an officer must have reasonable suspicion or probable cause to make such a request during an investigation. By failing to cite authority, defendant has effectively abandoned his position. *People v Piotrowski,* 211 Mich App 527, 530; 536 NW2d 293 (1995). In any event, there is no authority to support defendant's position that the police cannot ask for voluntary cooperation during an investigation unless they have probable cause or reasonable suspicion against the person whose cooperation is sought.

[4] On appeal, defendant does not challenge the search of the home where he lived, which occurred after the search of his vehicle.

[5] Although unnecessary to the resolution of this case, we nevertheless point out that Deputy Kovenich's initial stop and brief detention of defendant was constitutional. "Where an officer has a reasonable, articulable suspicion that a person has committed . . . a crime, he may briefly stop that person for the purpose of investigation." *People v Green,* 260 Mich App 392, 396-397; 677 NW2d 363 (2004), quoting *People v Estabrooks,* 175 Mich App 532, 535; 438 NW2d 327

(continued…)

Defendant also asserts a variety of other arguments to support his claim that the trial court should have suppressed the evidence found in his vehicle including that the seizure did not occur during a search incident to an arrest, that the search and seizure was not justified on grounds of officer safety, that the seizure cannot be validated under the inevitable discovery doctrine, and that there was no valid consent for the search. Due to the resolution of the prior issue, it is only necessary to address the consent issue. The record reveals defendant voluntarily went to the police station. He was not under arrest and was not seized. See *Green, supra* at 397, citing *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998) (holding that there is no restraint on a person's liberty and that a person is not seized when his voluntary cooperation is sought through noncoercive means). Nothing in the record reveals that defendant's actions were involuntary or coerced. The later search of defendant's vehicle occurred outside of the Monroe County Sheriff's Department after defendant provided his consent.

> The right against unreasonable searches and seizures is guaranteed by both the state and federal constitutions. US Const, Am IV; Const 1963, art 1, § 11. The state constitutional standard is not higher than the federal standard. The constitutions do not forbid all searches and seizures, only unreasonable ones. Reasonableness depends upon the facts and circumstances of each case. The applicable test in determining the reasonableness of an intrusion is to balance the need to search, in the public interest, for evidence of criminal activity against invasion of the individual's privacy. [*People v Jordan*, 187 Mich App 582, 586; 468 NW2d 294 (1991) (internal citations omitted).]

Generally, a search conducted without a warrant is unreasonable. *Id.* Consent is an exception to the warrant requirement, and searches and seizures are permitted when consent is unequivocal and specific. *Id.* at 587.

The record reflects that defendant not only consented to the search of his vehicle, but also consented to be photographed and fingerprinted in an effort to clear up the investigation. Defendant was not in custody at this time, and in fact, was not officially detained until Rankin placed a parole detainer on him, which occurred sometime after Rankin spoke with defendant in the intake area. Defendant provided unequivocal permission for the search of his vehicle before Rankin placed the detainer on defendant and he was taken to the detective bureau. After

(…continued)

(1989). "The articulable reasons for suspecting criminal activities must derive from the police officer's assessment of the totality of the circumstances." *Id.* Deputy Kovenich responded to Cade's house on March 14, 2003 where he received specific information about a white male, aged 25 to 30 years, with a military haircut, who was driving a green vehicle, either a Sable or Taurus, with a large brown dog in the car. Subsequently, Deputy Kovenich observed defendant, who fit the description, with a green Sable and a brown dog in the car. Deputy Kovenich had a reasonable suspicion to suspect defendant of being the perpetrator of the Cade home invasion and properly stopped him for a brief investigation. Defendant was detained no more than 10 or 15 minutes. The fact that defendant was in the back of Deputy Kovenich's patrol car for a portion of that time, while Deputy Kovenich made telephone calls to detectives working on the case, was a reasonable limited intrusion on defendant's liberty. See *Green, supra* at 397. We further note that the police did not handcuff or threaten defendant in any way.

reviewing the record, we are certain that defendant voluntarily consented to the search of his vehicle and conclude that the trial court's finding that defendant's consent was valid was not clearly erroneous. Because there was valid consent, the search of defendant's vehicle and the attendant seizure of evidence did not violate constitutional concerns. *Jordan, supra.*

In reaching our conclusion, we reject defendant's argument that once he was at the sheriff's department, he was not free to leave and, therefore, his consent should be considered coerced by circumstances. Again, the record reflects that defendant not only consented to the search of his vehicle, but consented to other investigative procedures. Defendant consented once at the Shell gas station – even before arriving at the sheriff's department – and again at the intake area in the sheriff's department even before Rankin placed the parole detainer on him. The police did not arrest defendant for any crime during the relevant time period related to the search of his vehicle. The record does not disclose, nor does defendant identify, any facts supporting his contention that that he did not freely provide his consent and instead the police obtained his consent under coercive circumstances. Defendant has not raised any issue about the legality of his parole detainer in his statement of the questions presented. *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999) (in issue is not properly before this Court if it is not raised in the statement of the questions presented).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper
/s/ Pat M. Donofrio